been appointed, this can only be done by compelling him to account. Until such accounting be had, and an application be made of the proceeds of the assets held by the receiver, it is difficult to see how a recovery can be had against the directors, because until then the extent of their liability cannot be ascertained."

CORPORATIONS—SALE OF ASSETS BY ALL STOCKHOLDERS WITHOUT FORMAL ACTION—PURCHASE OF STOCK IN OTHER CORPORATIONS—ULTRA VIRES—DE LA VERGNE REFRIGERATING M. CO. v. GERMAN SAVINGS INST. ET AL., 20 Sup. Ct. Rep. 20.--A contract for purchase of stock in another company for the purpose of controlling it, unless expressly authorized, is *ultra vires* and void. *Ultra vires* is a good defense to defeat recovery upon an executed contract, although an action upon *quantum meruit* will lie for benefits received. The good will of a company belongs to the corporation, and a transfer of it by all the stockholders without formal corporate action is invalid and confers no benefit. Justices Brewer and McKenna dissenting.

This reverses two decisions of the Circuit Court of Appeals for the Eighth District (36 U. S. A. 184, 49 U. S. A. 777). Although the generally accepted rule seems to be that *ultra vires* cannot be set up by a corporation to avoid its obligation upon a contract performed by the other party (Moraw, § 689 ff.), it is well established in the Supreme Court that such defense is good. The doctrine in this court is that "a contract of a corporation which is *ultra vires* in the proper sense, that is to say, outside the object of its creation, as defined in the law of its organization * * * is wholly void and of no legal effect." "Nothing done under it, nor the action of the court can infuse any vitality into it." But the court will do justice, so far as possible, by permitting recovery on the implied contract to return or make compensation for property or money which it has no right to retain. *Central Transf. Co.* v. *Pullman*, 139 U. S. 24, 60-61.

EXEMPLARY DAMAGES—EJECTMENT OF PASSENGER—IMPLIED MALICE—COWEN ET AL. v. WINTERS, 96 Fed. 929.—A general passenger agent deliberately repudiated certain tickets that had been sold to the public. *Held*, that a bona fide purchaser of one of these tickets could recover exemplary damages for his ejectment from defendant's train.

The rule in regard to exemplary damages, as laid down in *Railroad Co.* v. *Prentice*, 147 U. S. 101-107, is now firmly established and well recognized. The present case is interesting as a recent exposition of that rule. The peculiar duties that a common carrier owes to the public makes an abuse of its civil obligations especially serious. It is this feature, the carrier's close connection with the public, that permits a court to grant the rather exceptional remedy of exemplary damages. The facts in the present case seem to justify the court in holding as it has. But any extension of rule beyond the principles laid down in *Railroad Co.* v. *Prentice* above, should be viewed with concern, especially in view of the present apparent hostility to large corporations.

DEAD BODIES—RIGHT OF WIDOW TO REMOVE HUSBAND'S REMAINS—60 N. Y. Sup. 539 (Supreme Court).—A widow freely consenting to the interment of her husband's body in a certain burying ground, is estopped from removing it. But when, at the time of his death, she was in feeble health and became nearly frantic during the time which preceded the burial, she should not be regarded as consenting that the place of burial be permanent.

It has long since been established that the right of burial is a legal right. *Foley* v. *Phelps*, 1 N. Y. App. Div. 551; *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227; 14 Am. Rep. 667; *Matter of Widening Beekman St.*, 4 Bradf. (N. Y.) 503;

*Renihan* v. *Wright*, 125 Ind. 536, and that the surviving husband or wife, as the case may be, controls this right rather than the next of kin. *Weld* v. *Walker*, 130 Mass. 422; *Durell* v. *Hayward*, 9 Gray (Mass.) 248; *Larson* v. *Chase*, 47 Minn. 307; *Burney* v. *Children's Hospital*, 169 Mass. 57, 47 N. E. 401.

Though it is well established that after a burial, with the free consent of the person having the right to control the same, such person is estopped from removing the remains. *Fox* v. *Gordon*, 16 Phila. (Pa.) 185; *Peters* v. *Peters*, 43 N. J. Eq. 140; *Thompson* v. *Deeds*, 93 Iowa 228. Yet if the remains have been buried without such free consent, a court of equity may permit such person to remove them. *Weld* v. *Walker*, 130 Mass. 422; *Hackett* v. *Hackett*, 18 R. I. 155, 26 Atl. 42.

HOMESTEAD LIEN—BORROWED MONEY—CONTRACT—INDEBTEDNESS INCURRED AFTER HOMESTEAD RIGHT ATTACHES—JOHNSON COUNTY SAVINGS BANK v. CARROLL, 80 N. W. 683 (Iowa).—Where a creditor loans money on security, which is thereafter lost, he is not entitled to a lien on the homestead although the money loaned was used to pay part of the purchase price.

Robinson, C. J., dissenting on the ground that same gives to the defendant property which he never paid for, and holds it exempt from liability for the purchase price actually paid by another.

In *Eyster* v. *Hatheway*, 50 Ill. 521, and *Mitchell* v. *McCormick*, 50 Pac. 216, it was held that, in order to raise a lien on the homestead, it is not enough to show that the borrowed money was used to pay for the homestead, but it must also appear that it was a part of the contract that this should be done.

In *Williams* v. *Jones*, 100 Ill. 362, it was held that, although there be a waiver of the vendor's lien by taking other security for purchase money furnished, the holder of the indebtedness will not thereby lose the protection of the statute which provides that a homestead is not exempt from sale for a debt or liability incurred for the purchase or improvement thereof.

In *Christy* v. *Dyer*, 14 Iowa 438, it was held that a debt for the purchase money of premises occupied by the debtor as a homestead, is not a debt arising after the purchase of such homestead; and the homestead may, therefore, be subjected to the satisfaction of same.

INJUNCTION—LABELS—USE OF PRIVATE NAME AND LIKENESS—ATKINSON v. JOHN E. DOHERTY & Co., 80 N. W. 285 (Mich.).—Equity will not restrain the use of the name and likeness of a deceased person as a label to be used in the sale of cigars named after him, though he may not have been a public character, so long as it does not amount to a libel.

This case has aroused wide-spread comment throughout the country, as deciding that there is no law in Michigan against bad taste, and involves a discussion of the law in regard to the so-called "right to privacy." How much property right has a person in his name and portrait?

In *Schuyler* v. *Curtis*, 19 N. Y. Sup. 264, 64 Hun. 594, the Supreme Court held that a preliminary injunction would be at the instance of the relatives of a deceased woman to prevent her statue from being exhibited at the World's Fair, and designated "The Typical Philanthropist." The case was afterwards heard and a decree entered in accordance with the prayer of the bill. *Schuyler* v. *Curtis* (Sup. 124 N. Y. Sup. 509). This decision was squarely in conflict with the doctrine laid down in present case, but was reversed by the Court of Appeals in 1895. See 42 N. E. 22, Gray, J., dissenting, the opinion holding that "a woman's right of privacy, in so far as it includes the right to prevent the public from making pictures and statues of her, does not survive her, so that it can be enforced by her relatives." In *Marks* v. *Jaffa*, 26 N. Y. Sup. 908, publication of portrait was enjoined apparently on the strength of *Schuyler* v. *Curtis*, not then reversed.